Denis Rancourt's statement about judicial bias in Canadian courts

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I have been a self-represented litigant as the defendant in an aggressive $1 million defamation lawsuit over a blog posting, for more than two years now. I have defended myself in court in front of judges more than twenty times -- in the motions, appeals of motions, and case conferences in this action. I have prepared thousands of pages of legal documents, and I have been ordered to pay legal costs of the suing party of more than one quarter of a million dollars to date. The on-going action is set down for a three or more week jury trial that will commence on May 12, 2014.

I feel like I have seen it all in terms of what the judges are like, in terms of the tremendous negative systemic bias that exists against self-represented litigants. This bias exists irrespective of my level of education (*Ph.D.*) and irrespective of my ability to present an argument (former university professor), so I can imagine what it must be like for a single parent navigating issues of child custody.

In my case, the potential for systemic bias is increased by the fact that the plaintiff herself is a high-status lawyer within the legal establishment, and two of the lawyers who oppose me have formerly represented Canadian prime ministers. In addition, the private plaintiff is funded without a spending limit by a non-party, using public money. [1]

At the mandatory mediation I was not allowed an accompanying person and I faced five lawyers on the opposing side. Furthermore, the plaintiff had put a motion forward to impose the mediator of her choice, which I avoided by proposing a compromise settlement of the motion, which was accepted.

The evidence for routine judicial bias, as I see it, is overwhelming:

- judges and lawyers disrespectfully referring to me in court as "he", and discussing me as though I were not present (until this behaviour was denounced on the Ontario Civil Liberties Association web site)
- judges' frequent, repeated, and disorienting interruptions of me in court
- judges directly asking me irrelevant questions about matters not before the court (only to then reluctantly withdraw the questions or move on)
- allowing opposing counsel to make repeated and hyperbolic prejudicial comments, despite my objections
- allowing repeated and extensive in-court interruptions of me and my arguments by opposing counsel, despite objections
- insisting on demanding and recording the names of persons attending in open court as members of the public sitting on my side of the courtroom
- not allowing me time to make my arguments, despite good preparation and organization

- passive aggressive refusals to hear or acknowledge hard evidence of opposing counsels' misconducts, such as regarding unilaterally obtaining and misusing an uncertified partial transcripts prior to official transcript release, or such as making patently false statements to a judge
- refusing to acknowledge transcript evidence of opposing counsel leading his witnesses in out-of-court examinations
- refusing to acknowledge transcript and affidavit evidence of improper opposing counsel's out-of-court cross-examinations of me and my witnesses
- disadvantageous deadlines for document submissions and disadvantageous scheduling of court appearances, despite objections with reasons
- allowing virtually all procedural dirty tricks of the opponents, such as calling motions on one day's notice
- a judge imposing the scheduling of motions for leave to appeal the judge's own decisions, despite my objections to the chief justice of Ontario
- spontaneously changing judicial findings made from the bench, following opposing counsel suggestions or reactions
- refusing to consider a legal argument solely because opposing counsel states the argument to be invalid (overturned in leave to appeal)
- finding after the fact that a written order is simply an "opinion", not an order that can be appealed (overturned in leave to appeal)
- imposing that more than one motion be dealt with in the same hearing, rather than allowing preparation time between motions, despite my requests and objections
- making written orders without requesting, or receiving my submissions on the matter, or without allowing my request to make relevant submissions
- constructive barring of my evidence on motions, using both procedural technicalities and legal abstractions
- accepting ALL the plaintiff's refusals to answer questions in cross-examinations
- accepting ALL the plaintiff's witnesses' refusals to answer questions in cross-examinations
- ordering the great majority of my refusals to be answered, including ridiculous questions such as whether my spouse (who is not a party to the action) is Black (this was dropped by the plaintiff after I sought leave to appeal the order)
- allowing extensive and repeated excessive cross-examination of one of my trial witnesses prior to trial (as recognized by one judge in a costs order for a leave to appeal motion)
- refusing to respect my French language right in court, while suggesting and allowing punitive costs against me for demanding my language rights
- outrageously high costs orders against me, which are effectively punitive, irrespective of tested (by cross-examination) proof that I have no money
- small and large costs orders against me rather than against the opposing party even in the cases where I win all or the majority of the points argued in the motions
- incredibly skewed decisions in virtually all motions and appeals, despite my strong legal positions, with more "errors" in law then one can shake a stick at

- clarifying judgements at the suggestion of the opposing party
- refusal/delay in releasing a court transcript that does not contain confidential information, which the opposing party does not want released

and so on.

I have made all the transcripts of open court sessions public here:
https://archive.org/details/St-Lewis-v-Rancourt-in-court-hearings-to20130731

But in addition to the routine systemic bias, I was subjected to a particularly egregious case of judicial bias ("reasonable apprehension of bias" is the legal term) that I describe below. It is a matter that I took to the Supreme Court of Canada twice, as applications for leave to appeal, by two different routes. [2]

There was a significant barrier in even accessing the Supreme Court. In a clear demonstration of systemic judicial bias at the highest level, the Registrar of the Supreme Court refused to file my duly prepared first application, and refused to file my motion to denounce his refusal to file the application. This was resolved solely because the Ontario Civil Liberties Association made a request, directly to the Chief Justice of the Court, that the Registrar's conduct be investigated. [3]

In the end, six judges on two panels of the Supreme Court of Canada have refused to hear my evidence-based bias complaint against a lower court judge, which I summarized to the Court as:

> An Ontario superior court judge had strong personal, family, emotional, and contractual financial ties to a party intervening for the plaintiff in the case, and also to the law firm representing the party in court, and did not disclose any of these ties. This party was also the employer of the plaintiff in the lawsuit, and funded the plaintiff's litigation. The judge was tasked with determining the propriety of the party's funding of the plaintiff, which was done with public money. The judge's ties made it inconceivable that he would rule against the party. When the defendant discovered the judge's ties and presented the evidence, the judge lost decorum, threatened the defendant with contempt of court, and recused himself, but refused to consider whether there was an appearance of bias, and continued to release decisions. The judge's in-court reaction and walkout further confirmed his ties with the party in the lawsuit. The defendant raised the matter with six more judges, up to the court of appeal, but all of them refused to duly consider and properly apply the facts. As a result, all the decisions of the judge in the impugned motion to end the action stand to this day, even the decisions he released after recusing himself. [4]

This means that thirteen judges from three courts (Ontario superior, Court of Appeal, Supreme Court of Canada) have refused to allow my complaint of judicial bias to be heard on merits and to be allowed as a ground for appeal. The thus tainted decisions of the superior court judge

stand to this day, including decisions he released after recusing himself while refusing to rule on his own apparent bias.

The shocking July 24, 2012, court transcript (LINK) showing how the judge recused himself for the stated reason of the manner in which I brought the bias complaint, while refusing to rule on the evidence regarding his apparent bias, stands as a testament to how a judge in Canada can simply circumvent his duty to address the most serious complaint of the court's partiality. What followed is a testament to the degree to which the entire judicial establishment will condone such a manoeuvre, at least when the bias complaint is brought by a self-represented litigant being sued by prominent elements of the legal establishment.

The only remaining avenue is the international community. The Ontario Civil Liberties Association is submitting a complaint to the United Nations for violations of international agreements that guaranty an impartial court in signatory countries. [5]

Thus, my case has shown that the entire judicial edifice is perfectly willing and capable of ignoring both pervasive routine abuse and egregious particular cases of court partiality.

My story can be contrasted with the Chief Justice's repeated pleas that "access to justice" is a Canadian crisis that should be resolved. In light of my experience, it is difficult for me to believe that the pleas are authentic. I tend to think that the Chief Justice's comments mean solely that lawyers should be affordable and available for ordinary persons, and that she wishes that the legal processes were less wasteful. But, in my experience, as summarized above, access to lawyers is most certainly not access to justice, and neither is strong-handed case management by judges.

Bias is bias. If the evident systemic bias of the courts is not recognized and addressed, there can be no justice, irrespective of the resources attributed to the legal show.

Endnotes

[1] http://ocla.ca/our-work/public-campaigns/public-money-is-not-for-silencing-critics/

[2] http://uofowatch.blogspot.ca/2013/06/on-going-story-of-application-to.html
http://uofowatch.blogspot.ca/2014/02/supreme-court-of-canada-now-has-all.html
http://uofowatch.blogspot.ca/2014/02/ontario-civil-liberties-association.html

[3] http://ocla.ca/our-work/public-campaigns/#anchor-SCC

[4] My January 6, 2014, application for leave to appeal to the Supreme Court of Canada:
https://ia600602.us.archive.org/6/items/Post20140106SCCApplicationALLALLAsSevedRed/post--2014-01-06--SCC-Application--ALL-ALL---as-seved--red.pdf

[5] http://ocla.ca/release-supreme-court-of-canada-refuses-to-address-judicial-bias-loophole/